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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. JASON MICHAEL ARREAGA, Defendant and Appellant.	A154378 (Lake County Super. Ct. No. CR943745-B)

Defendant Jason Michael Arreaga was convicted of carjacking, robbery, battery causing serious bodily injury, and unlawfully taking a vehicle. He subsequently filed a motion for new trial arguing a letter he received from the victim, Antonio D., indicated the victim had a motive to lie. The trial court denied his motion because it concluded the letter was primarily "a host of juvenile name calling" and "trash talking."

On appeal, defendant argues the trial court erred by disregarding the letter, defense counsel was ineffective by failing to adequately emphasize the import of the letter, and insufficient evidence supported a felony conviction for unlawfully taking a vehicle under Vehicle Code section 10851, subdivision (a). We agree the felony conviction under Vehicle Code section 10851, subdivision (a) must be reduced to a misdemeanor. In all other respects we affirm the judgment.

I. BACKGROUND

Defendant was charged in a second amended information, filed on February 15, 2017, with premeditated attempted murder (Pen. Code,[1] §§ 664, 187, subd. (a); counts I & II), carjacking (§ 215, subd. (a); count III); robbery (§ 211; count IV); assault by means likely to cause great bodily injury (§ 245, subd. (a)(4); count V); battery causing serious bodily injury (§ 243, subd. (d); count VII); and unlawfully taking or driving a vehicle (Veh. Code, § 10851, subd. (a); count VIII).[2] The information also alleged a great bodily injury enhancement (§ 12022.7, subd. (a)) as to counts I through VI, and alleged defendant had served a prior prison term pursuant to section 667.5, subdivision (b).

The charges against defendant arose from a potential car sale by Antonio D. to defendant, who knew each other through a mutual acquaintance. Two conflicting versions of events were presented to the jury through the testimony of Antonio and defendant. Antonio testified he had shown defendant the vehicle approximately three weeks prior to the incident. On the day of the incident, Antonio met defendant at a Super 8 motel for the purpose of selling defendant his vehicle. However, defendant stated he only had $300 with him, and he needed a ride to Lake County to pick up the remaining $600. Antonio agreed to give defendant a ride. Before leaving to pick up the additional funds, Antonio showed defendant money he had won at a nearby casino. Antonio also left various possessions in defendant's room at the Super 8 motel.

When they arrived in Lake County, they met codefendant Azbill, who introduced himself as "Nick." Defendant stated he needed Azbill to help him obtain the $600. Azbill drove his vehicle up the mountain to the entrance of a gated ranch road, and Antonio followed with defendant in his vehicle. Defendant appeared to be talking on his phone and asking someone to open the gate. Both cars stopped by the gate, and defendant and Azbill invited Antonio to smoke some methamphetamine with them.

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[1] All further statutory references are to the Penal Code unless otherwise indicated.

[2] Additional counts and enhancements were alleged solely against defendant's codefendant, Andrew Nicholas Azbill.

After Antonio exited his vehicle, he was attacked by defendant and Azbill. Antonio testified defendant hit him in the face with something "cold and hard." He stated blood went everywhere. Azbill then hit him from behind and he fell to the ground. Defendant and Azbill continued to beat him on his head, with each taking approximately 20 swings. During the beating, defendant took Antonio's wallet. After Azbill left in his vehicle, Antonio ran and jumped over a cliff to escape defendant.

Antonio subsequently reached the Middle Creek Campground, where people called for help. He was airlifted to a hospital for treatment. Antonio needed to have the wounds on his head stapled, and he also suffered fractured fingers.

Defendant testified to an alternative version of events. Defendant testified he purchased the vehicle from Antonio a few weeks prior to the incident. Defendant stated he met with Antonio on the day of the incident in order for Antonio to drive him to purchase five pounds of marijuana. Antonio drove defendant to Lake County and they met with Azbill. The sellers of the marijuana stated defendant could only bring one vehicle to the purchase location, so Azbill drove defendant and Antonio. Upon arriving, Antonio began talking with a woman he knew. Antonio told defendant the woman would give him a ride to a casino where they could meet later. Defendant testified he and Azbill left, and he never received a call from Antonio. He stated he was not concerned because Antonio was "pretty flaky."

The jury was also shown security footage from the Super 8 motel. Footage from a day after the incident depicted defendant and another male wearing a white fedora hat and black-and-white tennis shoes leaving the motel carrying Antonio's property. A similar fedora and tennis shoes were located in codefendant Azbill's house.

Approximately one week after the incident, Antonio reported the attack to the Lake County Sheriff's Department. He led Lake County Deputy Sheriff John Gregore to a site approximately two miles from the Middle Creek Campground. Gregore gathered a sample of reddish colored dirt and photographed the area. A full DNA profile was obtained from the blood in the dirt that matched Antonio's blood.

One week later, Clearlake Police Officer Michael Dietrick encountered defendant in possession of Antonio's vehicle. Thereafter, Gregore and other officers executed a search warrant at Azbill's residence. During the course of the search, the officers located Antonio's duffle bag, a fedora and shoes similar to those in the Super 8 motel footage, a cellphone containing text messages with defendant around the time of the incident, and keys that fit into the ignition of Antonio's vehicle.

A jury found defendant guilty of carjacking, robbery, battery causing serious bodily injury, and unlawfully taking a vehicle. The jury acquitted defendant of the remaining charges and found the great bodily injury enhancement not true. Defendant waived a jury trial on the prior prison term allegation, and the court found that allegation true. The trial court subsequently sentenced defendant to 12 years in state prison. Defendant timely appealed.

II. DISCUSSION

Defendant raises three issues on appeal. He first challenges the trial court's ruling denying his motion for new trial. He then asserts defense counsel provided ineffective assistance in connection with his motion for new trial. Finally, defendant contends insufficient evidence supports his felony conviction for unlawfully taking a vehicle. We address each argument in turn.

A. *Motion for New Trial*

Defendant first asserts the trial court erred by denying his motion for new trial. Specifically, defendant contends a postjudgment letter written by Antonio raised serious doubts about the veracity and credibility of Antonio's testimony, which formed the basis for the prosecution's case. We disagree.

1. Relevant Background

As part of his new trial motion, defendant submitted a postjudgment letter written by Antonio. The majority of the seven-page letter contains a host of insults against defendant regarding his physique, hygiene, the quality of his life, and potential sexual encounters in prison. The letter also celebrates the idea that defendant will suffer physical injury while in prison.

The motion for new trial focused on one section of the letter, which defendant argued illustrated Antonio's involvement in the drug trade and perceived himself in competition with defendant regarding drug sales. This section of the letter reads: "I love myself for what I did to you for step[p]in[g] up to the plate—and when sendin[g] you away! I felt like a major leag[u]e baseball player hit[t]ing a grand slam! Your life is over rover let Tony take over! Tony will take over! Know that! You won[']t get to sling a thing in Cloverdale or Lake County! I own it all!" Defendant contends this excerpt demonstrates Antonio lied about his profession and had a financial motive to lie about defendant's conduct.

The trial court stated it had considered the letter and found the statement "You won[']t get to sling a thing in Cloverdale or Lake County! I own it all!" to be "vague and ambiguous." It concluded it was not probable the letter, if it had been introduced at trial, would have resulted in a different outcome because "the weight of this evidence is far removed from the characterization attempted to be assigned by defendant." The court found the letter was just "a host of juvenile name calling" and "trash talking," and denied the motion.

2. Legal Standard

When a party moves for new trial under section 1181 based on newly discovered evidence, the trial court must consider several factors, including: " ' "1. That the evidence, and not merely its materiality, be newly discovered; 2. That the evidence be not cumulative merely; 3. That it be such as to render a different result probable on a retrial of the cause; 4. That the party could not with reasonable diligence have discovered and produced it at the trial; and 5. That these facts be shown by the best evidence of which the case admits." ' " (*People v. Delgado* (1993) 5 Cal.4th 312, 328.) "A new trial motion based on newly discovered evidence is looked upon with disfavor. We will only disturb a trial court's denial of such a motion if there is a clear showing of a manifest and unmistakable abuse of discretion." (*People v. Mehserle* (2012) 206 Cal.App.4th 1125, 1151.)

A new trial on the ground of newly discovered evidence is not granted where the only value of the newly discovered testimony is as impeaching evidence or to contradict a witness of the opposing party. (*People v. Hall* (2010) 187 Cal.App.4th 282, 299.) This rule does not apply where the new evidence does more than merely impeach the main prosecution witness but tends to destroy the testimony of the primary prosecution witness by raising grave doubts about the witness's veracity and credibility. (*People v. Huskins* (1966) 245 Cal.App.2d 859, 862–863 (*Huskins*).)

3. Analysis

Defendant raises three arguments for why it is reasonably probable the letter would have resulted in a different outcome. First, defendant argues the letter contradicts the strongest evidence offered against defendant—Antonio's testimony.

We disagree the letter contradicts Antonio's testimony. Nothing in the letter recanted Antonio's testimony, discussed the attack or the events leading to the attack, or otherwise discussed the substance of Antonio's testimony. Instead, Antonio merely bragged in his letter that his testimony resulted in defendant's conviction. Such boasting does not address the merits of Antonio's testimony or any of the underlying facts regarding the incident.

Moreover, this case is distinctly different from *People v. Martinez* (1984) 36 Cal.3d 816, upon which defendant relies. In *Martinez*, the sole piece of evidence linking the defendant to a burglary of a drill press was a palm print. (*Id.* at p. 822.) Newly discovered evidence regarding when the drill press was last painted created a "critical gap in the prosecution's chain of proof" and created "reasonable doubt as to defendant's guilt." (*Id.* at pp. 823–824.) Here, however, the testimony of Antonio was not the only evidence presented of defendant's guilt. For example, defendant and codefendant Azbill were found in possession of Antonio's vehicle and property, including "shaved keys" that fit the ignition of the vehicle. Gregore testified his investigation discovered text messages between defendant and Azbill discussing a plan to " 'jack them.' " The evidence also indicated Antonio was uninjured prior to leaving the motel with defendant, he had incurred serious injuries by the next morning, and his blood

was located at a spot approximately two miles from the Middle Creek Campground in accordance with his testimony. While defendant disputes the proper interpretation of this evidence, we cannot conclude the trial court's interpretation represents a "manifest and unmistakable abuse of discretion." (*People v. Mehserle*, *supra*, 206 Cal.App.4th at p. 1151.)

Second, defendant argues the letter provides a motive for Antonio to lie and thus undermines Antonio's credibility. He relies on *Huskins*, *supra*, 245 Cal.App.2d 859 to support his position. In *Huskins*, a conviction for child molestation was reversed where the motion for new trial presented evidence showing the only adult witness who had supported the prosecution had a history of paranoid schizophrenia and had made unproven charges of child molestation against her own husband. (*Id.* at pp. 861–862, 866.) The court noted this new evidence destroyed the witness's testimony "by raising grave doubts about her veracity and credibility." (*Id.* at p. 863.) Defendant contends the letter indicates Antonio was a competing drug trafficker who hated defendant and lied in order to take over the area's drug trade.

We disagree the letter raises "grave doubts" about Antonio's "veracity and credibility," as arose in *Huskins*. The only explicit drug reference in the letter—"sling[ing]"—is made in connection with defendant's conduct.[3] Nothing in the record establishes Antonio was involved in a competing drug trafficking operation.[4] In fact, defendant's testimony undermines this assertion. Defendant testified Antonio drove him to pick up five pounds of marijuana on the night of the assault. Presumably defendant would not seek Antonio's assistance in facilitating a drug transaction, and Antonio would not provide such assistance, if they were in competition.

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[3] Defendant argues the trial court erred in part because it failed to recognize "slinging" as a drug term or defendant's testimony that he grew and sold marijuana. However, acknowledging that defendant was a drug dealer does not alter our analysis or justify a new trial.

[4] While defendant asserts the statement "I own it all" in the letter indicates Antonio was, or desired to be, involved in drug trafficking, such an interpretation is mere speculation. Nothing in the record corroborates such an interpretation.

Moreover, even if the letter did prove Antonio was in competition with defendant, it does not demonstrate Antonio falsely testified. In *Huskins*, the newly discovered evidence showed the witness suffered from mental illness and had previously made similar false accusations. (*Huskins*, *supra*, 245 Cal.App.2d at pp. 861–862.) Here, the evidence does not show Antonio had attempted to eliminate other drug trafficking competitors. At most, the letter provides a basis for impeachment, which does not justify a new trial. (*Id.* at p. 862 ["Ordinarily, evidence which merely impeaches a witness is not significant enough to make a different result probable"].)[5]

Third, defendant argues a different result was probable because the jury had doubts about Antonio's credibility even without admission of the letter. He asserts the jury found parts of Antonio's testimony not credible because they returned a not guilty verdict on the assault charge and rejected the great bodily injury enhancement. Defendant contends these findings indicate the jury rejected Antonio's testimony that defendant inflicted Antonio's injuries during the battery.

Nothing in the record supports such a conclusion. To the contrary, the guilty verdict on the battery charge demonstrates the jury believed defendant caused *serious* bodily injury. And the jury instruction presented to the jury defined serious bodily injury as "a serious impairment of physical condition. Such an injury may include: loss of consciousness, concussion, bone fracture, protracted loss or impairment of function of any bodily member or organ, a wound requiring extensive suturing, and serious disfigurement." While the jury concluded the prosecution did not prove *great* bodily injury, the battery conviction indicates the jury believed defendant inflicted serious injuries to Antonio during the attack. Accordingly, the trial court's statement that "The

[5] Defendant also argues the letter raises doubts about Antonio's credibility because it demonstrates Antonio hated defendant despite testifying he had no reason to dislike defendant. Antonio testified he did not have a reason to dislike defendant *prior* to the attack. His statements in the letter merely indicate Antonio disliked defendant *after* the attack. The letter provides no insight as to Antonio's sentiments toward defendant at the time of the attack.

jury found credibility in [Antonio's] testimony" was accurate and does not indicate admission of the letter would likely result in a different outcome.[6]

The letter does not contradict Antonio's testimony or raise grave doubts about his credibility so as to warrant a new trial. At most, the letter may constitute impeachment evidence, which is insufficient to support a new trial motion. (*Huskins, supra,* 245 Cal.App.2d at p. 862.) Accordingly, defendant has not demonstrated the trial court's denial of his motion for new trial constituted an abuse of discretion.

B. *Ineffective Assistance of Counsel*

Defendant contends his trial counsel provided ineffective assistance because he failed to correct the trial court regarding its various misunderstandings of the facts and jury verdicts or advocate for the court to consider the entirety of the letter. Defendant asserts competent counsel would have highlighted these errors for the court, and he was thus prejudiced.

"Establishing a claim of ineffective assistance of counsel requires the defendant to demonstrate (1) counsel's performance was deficient in that it fell below an objective standard of reasonableness under prevailing professional norms, and (2) counsel's deficient representation prejudiced the defendant, i.e., there is a 'reasonable probability' that, but for counsel's failings, defendant would have obtained a more favorable result." (*People v. Dennis* (1998) 17 Cal.4th 468, 540.) Defendant bears the burden to establish both elements. (*Strickland v. Washington* (1984) 466 U.S. 668, 694.) On review, we are required to exercise deferential scrutiny, i.e., we may not second-guess counsel's reasonable tactical decisions. (*People v. Montoya* (2007) 149 Cal.App.4th 1139, 1147.) There is a " ' " ' "strong presumption that counsel's conduct falls within the wide range of professional assistance." ' " ' " (*Ibid.*) "We reverse on the ground of inadequate

[6] Defendant also highlights inconsistencies in Antonio's testimony, argues the record supports defendant's claim he purchased the vehicle, and asserts none of the evidence corroborating Antonio's testimony is persuasive. But these issues are ones of interpretation, and we cannot conclude the trial court's interpretation represents a "manifest and unmistakable abuse of discretion." (*People v. Mehserle, supra,* 206 Cal.App.4th at p. 1151.)

assistance on appeal only if the record affirmatively discloses no rational tactical purpose for counsel's act or omission." (*Id.* at p. 1148.) "When, however, the record sheds no light on why counsel acted or failed to act in the manner challenged, the reviewing court should not speculate as to counsel's reasons." (*People v. Diaz* (1992) 3 Cal.4th 495, 557.)

Defendant first argues his defense counsel provided ineffective assistance because the trial court failed to "understand several important issues," and defense counsel did not correct those misunderstandings. However, as discussed in part II.A.3., *ante*, the court did not misunderstand any issues critical to the motion for new trial. For example, the court's statement that the jury found credibility in Antonio's testimony is accurate and not contradicted by the jury verdict on the assault charge or the great bodily injury enhancement. Similarly, the court's statement that the record lacked an admission by defendant that he sold drugs is not critical to the motion. The fact that defendant sold drugs does not indicate Antonio was a drug dealer or in competition with defendant. Accordingly, defense counsel was not ineffective by failing to bring such matters to the court's attention.

Defendant next argues defense counsel was ineffective by failing to emphasize and argue the importance of the entire letter, rather than focusing on three key sentences. However, defendant's argument—that Antonio had a motive to lie—is set forth in those three sentences. Thus, defense counsel logically focused on those sentences. While defense counsel could have argued the merits of the letter in a different manner, "[t]he mere circumstance that a different, or better, argument could have been made is not a sufficient basis for finding deficient performance by defense counsel." (*People v. Ledesma* (2006) 39 Cal.4th 641, 748.) Moreover, even if defense counsel should have emphasized the entirety of Antonio's letter in the motion for new trial, we cannot conclude there was a reasonable probability of a more favorable result. In ruling on the motion, the trial court stated it read the letter "more than once" and had given "significant consideration and analysis" as to whether Antonio had a motive to be false in his testimony. The record thus reflects the court considered the entirety of the letter when

ruling on the motion. Accordingly, defendant has failed to establish his counsel provided ineffective assistance.

C. *Vehicle Code Section 10851*

Defendant argues insufficient evidence supports his felony conviction under Vehicle Code section 10851, subdivision (a), because the evidence establishes the car was worth less than $950.

When we review a jury verdict for sufficiency of the evidence, we are limited to determining whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. (*People v. Morgan* (2007) 42 Cal.4th 593, 613.) An element has substantial support if the evidence is " ' "reasonable in nature, credible, and of solid value." ' " (*Id*. at p. 614.)

Following passage of Proposition 47, prosecutors must now prove the vehicle had a fair market value exceeding $950 to obtain a felony conviction for vehicle theft under Vehicle Code section 10851. (Pen. Code, § 490.2; *People v. Page* (2017) 3 Cal.5th 1175, 1183–1187; *People v. Romanowski* (2017) 2 Cal.5th 903, 914 [proper measure of $950 threshold for theft crimes is " 'reasonable and fair market value' "].) Generally, "fair market value" means the highest price agreed upon by a willing buyer and willing seller at the time and place of the theft. (See *People v. Pena* (1977) 68 Cal.App.3d 100, 103–104.) An owner of property "may testify as to his opinion of the value in issue." (*City of Pleasant Hill v. First Baptist Church* (1969) 1 Cal.App.3d 384, 411.) "The weight to be given the owner's testimony as to value is for the trier of the fact." (*People v. Henderson* (1965) 238 Cal.App.2d 566, 567.)

Here, Antonio did not testify as to the value of the vehicle. He only testified that he initially offered the car to defendant for $1,500 and then had lowered the price to $1,200 during negotiations and, ultimately, agreed to $900. He did not testify the $1,500 or $1,200 prices represented the fair market value of the vehicle. Nor does the record reflect a willing buyer and seller would have agreed to a purchase price greater than $950 for the car. Instead, the two sales transactions involving the vehicle were both for less

than $950. Antonio purchased the vehicle for either $900 or $600 approximately a year before selling the vehicle to defendant. At the time Antonio purchased the vehicle, it had new tires but the head gasket needed work. There is no evidence in the record that Antonio performed any type of work on the vehicle to increase its value. Antonio then sold the vehicle to defendant for either $900 or $500 worth of drugs. While the record reflects Antonio stated he needed the money "to do something else with," namely, purchase a truck, he did not testify he had an urgent need to sell. (See CALCRIM No. 1801.) Accordingly, there is insufficient evidence to support a jury finding that the vehicle was valued over $950.

As part of defendant's sentencing, the court imposed a three-year prison term for his felony conviction arising from Vehicle Code section 10851, subdivision (a). Because we conclude this conviction must be reduced to a misdemeanor, the matter is remanded for resentencing as to the misdemeanor. (§ 12 [court's duty to "pass sentence [and] to determine and impose the punishment prescribed"].) We note, however, any resentencing will not impact defendant's current prison term because the court stayed execution of his Vehicle Code section 10851 sentence under Penal Code section 654.

III. DISPOSITION

Defendant's felony conviction on count VIII (Veh. Code, § 10851, subd. (a)) is reduced to a misdemeanor and the matter is remanded to the trial court for resentencing. The judgment is otherwise affirmed.

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Margulies, Acting P. J.

We concur:

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Banke, J.

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Sanchez, J.

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